

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 17522 of 2004

Dated: 16-11-2005

Between:

M/s Hema Chand Corporation rep., by its

Prop: Palash Kumar Burmen,

S/o Dinesh Chander Burman,

R/o Ramanthapur, R.R.District.

..... PETITIONER

AND

The District Supply Officer, Hyderabad and another

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

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WRIT PETITION NO : 17522 of 2004

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ORDER:

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Heard the learned counsel for the petitioner and the learned Government

Pleader for Civil Supplies appearing for respondents.

This writ petition is filed questioning the seizure effected by the respondent authorities on 07-07-2004 whereunder 19,000 litres of White Petroleum (SBP spirit) belonging to the petitioner was seized.

The material on record shows that on 07-07-2004 the first respondent- District Supply Officer, Ranga Reddy District made a surprise visit on the petitioner's business premises and seized 19000 liters of White Petrol (SBP spirit) on the allegation that he was carrying on business in white petrol un-authorisedly.

The main contention raised by the petitioner is that since the White Petrol (SBP spirit) is not covered by the provisions of any of the Control Orders namely Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990, Kerosene (Restriction on use and fixation of ceiling prices) Order, 1993, Lubricating Oils and Grease Processing and Supply and Distribution and Regulation Order, 1987, Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of use Automobiles) Order, 2000, and Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, the alleged seizure is without jurisdiction apart from being arbitrary and illegal.

On behalf of the respondents, a counter affidavit has been filed stating that as per Clause 3 of the Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of use in Auto Mobiles) Order, 2000 there is a restriction on sale and use of solvents. It is further stated that on receipt of credible information that the petitioner was conducting business of solvents without obtaining a licence and selling the same to automobile persons for adulterating in MS and HSD by storing huge quantities of solvents, the authorized officers conducted search and found 19000 litres of SBP Spirit without any purchase bills. On questioning, the petitioner had not submitted any licence, or relevant receipts, and even he had not maintained any accounts. As there was reason to believe that the petitioner contravened the provisions of the Solvent Order 2000, the stocks of SBP product to the extent of 19000 litres was seized under the cover of Panchanama. The samples were also sent to Forensic Laboratory for analysis. In pursuance thereof, a case under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') has been filed and the same is

pending before the second respondent-Joint Collector, Ranga Reddy District. It is also stated that the petitioner was served with a show cause notice, dated 31-08-2004 and further proceedings were pending before the second respondent-Joint Collector.

Learned counsel for the petitioner while pointing out that in the panchanama it was not mentioned that any samples were drawn from the licensed premises, submits that in fact, the respondent-authorities have not drawn any samples as required under the Control Orders and therefore, all the allegations made against the petitioner are incorrect and without any basis and the impugned seizure is liable to be set aside on that ground alone.

It is relevant to note that as per clause 3(3) of the Control Order 2000 any person whosoever is engaged in the sale or trading of solvents or other products either imported or indigenous, for any purpose whatsoever shall file end use certificates from consumers to whom he sells and furnish customer wise sales details to the District Magistrate or State Civil Supplies Authorities on a quarterly basis.

The specific allegation, as can be seen from the panchanama dated 07-07-2004, was that the petitioner failed to produce any stock registers and authorized licence in respect of 94 barrels of white petrol (SBP spirit) available in his business premises. If that be so, a *prima facie* case has been made out to show that the provisions of the Control Order, 2000 have been violated and therefore the seizure cannot be said to be illegal. Whether the stocks seized are liable to be confiscated or not is a question to be decided by the Joint Collector after conducting necessary enquiry following due process of law. Since such enquiry is pending under Section 6-A of the Act, and the petitioner was already issued a show cause notice, it is open to the petitioner to submit necessary explanation, in which event the second respondent-Joint Collector shall consider the same and pass appropriate orders in accordance with law.

Since the plea of the petitioner that samples were not drawn, has been denied by the respondents, the second respondent-Joint Collector, Ranga Reddy District shall also enquire into the said disputed question of fact and record a finding thereon. It is made clear that the enquiry pending under Section 6-A of the Act shall be concluded as expeditiously as possible preferably within a

period of eight weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs.

G.ROHINI,J

16-11-2005

klp